

WBCB010032452025



**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
FAST TRACK COURT, COOCH BEHAR.**

Present : **Sri Madhusudan Pal,**
(J.O. Code WB00925)
Additional Sessions Judge,
Fast Track Court, Cooch Behar.

Presented on : 20-11-2025
Registered on : 20-11-2025
Judgement Reserved on : **16.07.2026**
Date of Judgement : **24.07.2026**
Duration : 0 years, 8 months, 4 days

Criminal Revision No. –21 of 2025
(CIS No. 21 of 2025)
CNR No. WBCB01-003245-2025

1. Akhil Ch. Barman

.....Petitioner/ Revisionist

Represented by : Ld. Advocate Swagata Sehanabis

1. Smt. Nivedita Barman
2. The State of West Bengal

.....Respondents.

Respondent No. 1 Represented by :Ld. Advocate Shibendra Nath Roy

Respondent No. 2 Represented by : Ld. Advocate Dilip Das

J U D G M E N T

1. This is an application U/s 438/440 of BNSS filed by the Petitioner/Revisionist being aggrieved and challenging the legality, validity, correctness and propriety of the **Order No. 6 dated 15.09.2025** passed by Ld. Judicial Magistrate, 2nd Court, Cooch Behar, Sadar (hereinafter referred to as Ld. Trial Court) in **Misc. Execution Case No.43 of 2025 u/s. 125(3) Cr.P.C.**, while

passing order of maintainability of that execution case filed by present Respondent No.1 Nivedita Barman against present Revisionist Akhil Chandra Barman.

2. The brief facts necessary to be noticed for deciding this Revision are:

(i) **Revisionist's case** is that in above noted Execution Proceedings he appeared before Ld. Trial Court and submitted written objection to the petition of execution proceedings filed there, by Nibedita Barman Respondent(Petitioner before Ld. Trial Court). Ld. Trial Court heard both sides on the point of maintainability of that s.125(3) Cr.P.C. proceedings and passed order No. 6 dated 15.09.2025 overruling the objections raised by him there, as to maintainability of that execution case. Being aggrieved by that order this Revision Application is filed on the ground that the Ld. Trial Court did not consider the matter that a MAT Suit being No. 28/2020 was pending before Ld. Additional District Judge, Tufanganj, Cooch Behar and in that said MAT Suit a Misc Judicial Case No. 1/2020 was pending. In that said Misc. Judicial Case the present Revisionist as O.P. paid all the amount of maintenance from January 2022 to December, 2022, yet similar amount had been claimed in the present execution case No.43 of 2025 u/s. 125(3) Cr.P.C. by the Petitioner .She is not entitled to get maintenance twice for the same period, but Ld. Trial Court ignoring this point reached to a wrong findings regarding maintainability of this execution case which is liable to be set aside. The date of birth of the son(Arijit Barman) was 09.05.2005. He attained majority on 08.05.2023 and was not entitled to get any maintenance. Revisionist would further add that the amount depicted in the execution petition amounting to Rupees One Lakh Thirty Two Thousand i.e., from January, 2022 to December, 2022 was not due to the Opposite Party. As such, impugned order No.6 dated 15.09.2025 passed by Ld. Judicial Magistrate, 2nd Court, Cooch Behar, Sadar should be rejected.

(ii) **Respondent no.1** Nibedita Barman has contended that Revisionist is her husband. In Misc case no. 104 of 2013 u/s. 127 Cr.P.C., The Ld. Court vide Order dated 07.07.2015 awarded ,maintenance for the petitioner Nibedita Barman and her minor son Arijit Barma at the rate of Rs. 7,000/- (Seven Thousand) per month for the petitioner and Rs. 4,000/- (Four Thousand) per month for the minor child (in total Rs. 11,000/- per month) on and from 07.07.2015. The Opposite Party Sri Akhil Chandra Barman being a high school teacher at Solmari Nasimia High Madrasa was getting salary about Rs. 65,000/- (Sixty Five Thousand) per month. Yet till date in spite of having such order of maintenance present Revisionist did not clear the arrear and current maintenance. The Respondent and

her minor child were facing severe financial crisis to maintain their livelihood. There was a total due of Rs. 1,32,000/- (Rupees one lakh thirty two thousand) for the period of nine (9) months i.e., on and from January, 2022 to December, 2022. Present Revisionist (Opposite Party before Ld.Trial Court) intentionally flouted the Order of the Ld. Court. Respondent No.1 concludes with submission for rejection of this Revisional Application with cost.

(iii) **Respondent No.2 State of West Bengal** has supported the order passed by Ld. Judicial Magistrate, 2nd Court, Cooch Behar, Sadar, in Misc. Execution Case No. 43 of 2025 u/s 125(3) Cr.P.C. being lawful and correct.

3. **POINT FOR DECISION**

Whether the impugned order No.6 dated 15.09.2025 passed by the Ld. Judicial Magistrate, 2nd Court, Cooch Behar, Sadar in Misc. Execution Case No.43 of 2025 u/s. 125(3) Cr.P.C., is unlawful, perverse and calls for interference by this Court ?

4. **Decision with Reasons**

Being the Court of Revision, this Court has to see the legality, validity, correctness and propriety of the impugned order passed by the Ld. Trial Court and further to see as to whether the Ld. Trial Court committed any illegality or materials irregularity in passing the impugned order.

In **Catano Colaco vs. Joao Rodrigues AIR 1966 Goa, 32** Hon'ble Court observed that during revision interference may be justified;

- (a) whether the decision is grossly erroneous;
- (b) where there is no compliance with the provisions of law;
- (c) where the finding of fact affecting the decision is not based on the evidence;
- (d) where materials evidence of the parties is not considered, and
- (e) Where judicial discretion is exercised arbitrarily or purposely.

In **Iqram vs. State of U.P., 1988 (2) Crimes 414, 417(All)** Hon'ble Court observed that even though there might be some error, omission or irregularity in the findings of order or proceedings of the sub-ordinate Courts, the Sessions Court cannot reverse those findings unless he is satisfied that a failure of justice has occasioned thereby.

In **Gulaboo vs. State of U.P. 1988 (1) Crimes 243 (All)** Hon'ble Court observed that it is the satisfaction of the Magistrate, which is of relevance for the

purposes of these sections. A revisional Court may have the power to correct any error in the order passed by the Magistrate, but it will be beyond its powers and jurisdiction to re-assess the evidence and so on such re-assessment to arrive at a finding which is at variance with the finding recorded by the Magistrate.

Here existence of marital tie between Revisionist Akhil Chandra Barman and Respondent No.1 Nibedita Barman is admitted as well as their separate living whatever may the reason be. It is also admitted that Arijit Barman was their son. It's trite law that **u/s. 125 Cr.P.C.** if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a Magistrate upon proof of such neglect or refusal, order such a person to make a monthly allowance for the maintenance of such wife and children as Magistrate considers reasonable. **S.125(3) Cr.P.C** provides the legal mechanism for enforcing a maintenance order when a person fails to pay without a good reason, allowing a Magistrate to issue a warrant for recovery of the same in default to imprisonment. Whereas **S.127 CrPC** provides that *on proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.; It further provides that where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly. It also provides that where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that— the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage; It further provides that at the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.*

During argument Ld. Senior Counsel for the Revisionist has cited the Rulings of Hon'ble Apex Court in **Abhilasha Vs. Parkash AIR 2020 SC 4355** and

has drawn attention of this Court to Paragraph -35 and 36. In Paragraph 35 Hon'ble Apex Court observed that the maintenance as contemplated under Act, 1956 is a larger concept as compared to concept of maintenance under Section 125 CrPC. Section 3(b) while defining maintenance gives an inclusive definition including marriage expenses in following words :- "3. Definitions – In this Act unless the context otherwise requires- (b) "Maintenance" includes- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage; (c) "Minor" means a person who has not completed his or her age of eighteen years." In paragraph 36 Hon'ble Apex Court observed that the purpose and object of Section 125 CrPC is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 CrPC to determine the claims contemplated by Act 1956.

This Court is abided by the Principles of Law enshrined there in but in the present facts and circumstances of this Revision where the order of executing Court is under challenge, this Court is of view that such ruling does not help the Revisionist.

Ld. Defence Counsel has also cited ruling of Hon'ble Apex Court in **Rajnish Vs. Neha and others in Criminal Appeal No. 730 of 2020** (decided on 04.11.2020). LD. Counsel had drawn this Court's attention to paragraph no. 98 of the same, wherein Hon'ble Apex Court of India had directed the family Courts/District Courts/Magistrate Courts through out the country to the effect that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the Applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

This Court is abided by such directions of Hon'ble Apex Court. Here materials on record reveals that in the petition and written objection to the same

before Ld. Additional District Judge, Tufanganj, Cooch Behar both the parties contested in Misc Judicial Case No. 01 of 2020 arising out of Matrimonial Suit No. 28 of 2020 and the reference of order passed in proceedings u/s 125 CrPC by Ld. Judicial Magistrate is there but not the order passed u/s 127 CrPC by Ld. Judicial Magistrate. Thus, it is evident that both parties were silent regarding the same and Ld. Additional District Judge, Tufanganj passed its order therein as per materials on record. Besides, this Court is of exclusive opinion that questions of whether Respondent No. 1 Nivedita Barman was getting maintenance Pendente lite in a MAT Suit or not and whether their son had already attend majority or not are to be raised and decided before Ld. Magistrate Court while proceeding with Misc Case No. 104 of 2013 not before the executing Court while proceeding with Misc Execution Case No. 43 of 2025. It is settled principle of law that an executing Court cannot go beyond the order before it to be executed.

5. In view of above said discussions, coming to the merits of the cases forwarded by both sides, it is noticed that on careful consideration of materials on record, on clear, lawful reasons Ld. Trial Court passed order No. 6 dated 15.09.2025 while passing order of maintainability of that execution case filed by present Respondent No.1 Nivedita Barman against present Revisionist Akhil Chandra Barman and the reasons assigned by Ld. Trial Court in Support of its findings need not to be re-stated as discussed above and, the findings recorded by the Ld. Trial Court are not to be dislodged by this Court in this affirming Judgement.

6. Thus, present Revision fails and is **dismissed on contest leaving the parties to bear their own costs** of this revision.

7. Court fees paid is correct.

8. Let a copy of the judgement and order along with trial court record be sent to Ld. Judicial Magistrate, 2nd Court, Cooch Behar, Sadar for information.

Parties are at liberty to act upon Serve Copy of this Judgement and Order.

Note in Relevant Register.

Dictated & Corrected by me,

Additional District Judge,
Fast Track Court, Cooch Behar

Additional District Judge,
Fast Track Court, Cooch Behar